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GURU INC., FIND MY SPECIALIST, INC.,

SERIOUSNET, INC., RAVI K. LAHOTI, RAJ LAHOTI

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

TRAFFICSCHOOL.COM, INC., a
California Corporation; DRIVERS ED
DIRECT, LLC, a California limited
liability company,

Plaintiffs,

v.

EDRIVER, INC., ONLINE GURU,
INC., FIND MY SPECIALIST, INC.,
and SERIOUSNET, INC., California
corporations, RAVI K. LAHOTI, an
individual; RAJ LAHOTI, an individual;
DOES 1 through 10,

Defendants.

Case No: CV 06-7561 PA (CWx)

**DEFENDANTS' EVIDENTIARY
OBJECTIONS TO AND MOTION
TO STRIKE PORTIONS OF THE
DECLARATION OF MINA I.
HAMILTON SUBMITTED IN
SUPPORT OF THE JOINT STATUS
REPORT**

Date: December 5, 2011

Time: 1:30 p.m.

Ctrlm: 15

Judge: Honorable Percy Anderson

Complaint Filed: November 28, 2006

Defendants Edriver, Inc., Online Guru, Inc., Find My Specialist, Inc.,
Seriousnet, Inc., Ravi K. Lahoti, and Raj Lahoti ("Defendants") hereby object to
and move to strike portions of the declaration of Mina I. Hamilton including
certain exhibits thereto filed by plaintiffs Trafficschool.com, Inc. and Drivers Ed
Direct, LLC ("Plaintiffs") in support of the Joint Status Report as set forth below.

///

1 1. Page 2, Lines 16-20, Exhibit F: “Attached hereto as Exhibit F is a
 2 true and correct copy of a print out of the DMV.ORG splash screen as it appeared
 3 on or about March 23, 2009. As can be seen in this print out, there are two drop
 4 down menus on the screen. These drop down menus appeared while the page was
 5 downloading and then disappeared once the page fully loaded in the web browser.”

6 Objection: Exhibit F, which allegedly consists of the DMV.ORG
 7 splash screen on or about March 23, 2009, and testimony as to what happened
 8 upon visiting the website lack foundation, are irrelevant and imprecise as to time,
 9 express improper opinion, and are not the best evidence. Defendants invite the
 10 Court to visit the website. *See* Declaration of Raj Lahoti in Support of Joint Status
 11 Report, filed on September 6, 2011 as Doc. No. 306 (“Lahoti Joint Status Decl.”)
 12 and Declaration of Raj Lahoti in Support of Defendants’ Opposition to Plaintiffs’
 13 Motion for Attorneys’ Fees and Costs (“Lahoti Attorneys’ Fee Objection Decl.”).
 14 Exhibit F should be stricken. Fed. R. Evid. 401, 403, 602, 701.

15 Sustain _____ Overrule _____

16 2. Page 2, Lines 21-22, Exhibit G: “Attached hereto as Exhibit G is a
 17 true and correct copy of a screen shot of the DMV.ORG splash screen as it
 18 appeared on or about August 25, 2009.”

19 Objection: Exhibit G, which allegedly consists of the DMV.ORG
 20 splash screen on or about August 25, 2009, lacks foundation, is irrelevant and
 21 imprecise as to time, expresses improper opinion, and is not the best evidence.
 22 Defendants invite the Court to visit the website. *See* Lahoti Joint Status Decl. and
 23 Lahoti Attorneys’ Fee Objection Decl. Exhibit G should be stricken. Fed R. Evid.
 24 401, 403, 602, 701.

25 Sustain _____ Overrule _____

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1 3. Page 2, Lines 23-24, Exhibit H: “Attached hereto as Exhibit H is a
2 true and correct copy of a screen shot of the DMV.ORG splash screen as it
3 appeared on or about August 26, 2009.”

4 Objection: Exhibit H, which allegedly consists of the DMV.ORG
5 splash screen on or about August 26, 2009, lacks foundation, is irrelevant and
6 imprecise as to time, expresses improper opinion, and is not the best evidence.
7 Defendants invite the Court to visit the website. *See* Lahoti Joint Status Decl. and
8 Lahoti Attorneys’ Fee Objection Decl. Exhibit H should be stricken. Fed. R. Evid.
9 401, 403, 602, 701.

10 Sustain _____ Overrule _____

11 4. Page 2, Lines 25-28 and Page 3, Line 1, Exhibit I: “Attached hereto
12 as Exhibit I is a true and correct copy of a screen shot of the DMV.ORG splash
13 screen as it appeared on or about July 28, 2011. Defendants have removed
14 “Unofficial Guide to the DMV” from their license plate logo. Additionally, there
15 was a delay of approximately two to three seconds before the disclaimer text (in
16 faint grey font) appeared right below the browser toolbar.”

17 Objection: Exhibit I, which allegedly consists of the DMV.ORG
18 splash screen on or about July 28, 2011, and testimony as to what happened upon
19 visiting the website lack foundation, are irrelevant and imprecise as to time,
20 express improper opinion, and are not the best evidence. Defendants invite the
21 Court to visit the website. *See* Lahoti Joint Status Decl. and Lahoti Attorneys’ Fee
22 Objection Decl. Exhibit I should be stricken. Fed. R. Evid. 401, 403, 602, 701.

23 Sustain _____ Overrule _____

24 5. Page 3, Lines 2-5, Exhibit J: “Attached hereto as Exhibit J is a true
25 and correct copy of a screen shot of the DMV.ORG splash screen as it appeared on
26 or about August 29, 2011. Again, there was a delay of approximately two (2)
27 seconds before the disclaimer text (in faint grey font) appeared right below the
28 browser toolbar.”

Objection: Exhibit J, which allegedly consists of the DMV.ORG splash screen on or about August 29, 2011, and testimony as to what happened upon visiting the website lack foundation, are irrelevant and imprecise as to time, express improper opinion, and are not the best evidence. Defendants invite the Court to visit the website. *See* Lahoti Joint Status Decl. and Lahoti Attorneys' Fee Objection Decl. Exhibit J should be stricken. Fed. R. Evid. 401, 403, 602, 701.

Sustain _____ Overrule _____

6. Page 3, Lines 7-11, Exhibit K: "Attached hereto as Exhibit K is a true and correct copy of a print out showing the Google search results when 'DMV' is searched. As can be seen, Defendants' website, DMV.ORG, appears as the sixth website in the organic search results, right after the official websites of the California, Virginia, New York, and Nevada Department of Motor Vehicles ('DMV')."

Objection: Exhibit K, which allegedly consists of a print out showing the Google search results when "DMV" is searched, lacks foundation, is irrelevant and imprecise as to time, expresses improper opinion, and is not the best evidence. Defendants invite the Court to visit the website. *See* Lahoti Joint Status Decl. and Lahoti Attorneys' Fee Objection Decl. Exhibit K should be stricken. Fed. R. Evid. 401, 403, 602, 701.

Sustain _____ Overrule _____

7. Page 3, Lines 12-15, Exhibit L: "Attached hereto as Exhibit L is a true and correct copy of a screen shot showing the Google search results when 'DMV approved traffic school' is searched. As can be seen, Defendants' website, DMV.ORG, appears as the second website in the organic search results, right after the California DMV website (www.dmv.ca.gov)."

Objection: Exhibit L, which allegedly consists of a screen shot showing the Google search results when "DMV approved traffic school" is searched, lacks foundation, is irrelevant and imprecise as to time, expresses

improper opinion, and is not the best evidence. Defendants invite the Court to visit the website. *See* Lahoti Joint Status Decl. and Lahoti Attorneys' Fee Objection Decl. Exhibit L should be stricken. Fed. R. Evid. 401, 403, 602, 701.

Sustain _____ Overrule _____

8. Page 3, Lines 16-19, Exhibit M: "Attached hereto as Exhibit M is a true and correct copy of a screen shot showing the Google search results when 'DMV traffic ticket information' is searched. As can be seen, Defendants' website, DMV.ORG, appears as the first website in the organic results list."

Objection: Exhibit M, which allegedly consists of a screen shot showing the Google search results when "DMV traffic ticket information" is searched, lacks foundation, is irrelevant and imprecise as to time, expresses improper opinion, and is not the best evidence. Defendants invite the Court to visit the website. *See* Lahoti Joint Status Decl. and Lahoti Attorneys' Fee Objection Decl. Exhibit M should be stricken. Fed. R. Evid. 401, 403, 602, 701.

Sustain _____ Overrule _____

9. Page 3, Lines 22-23, Exhibit N: "Attached hereto as Exhibit N is a true and correct copy of a print out of DMV.ORG's Facebook Home Page as it appeared on or about August 31, 2011."

Objection: Exhibit N, which allegedly consists of a print out of DMV.ORG's Facebook Home Page on or about August 31, 2011, lacks foundation, is irrelevant and imprecise as to time, expresses improper opinion, and is not the best evidence. Defendants invite the Court to visit the website. *See* Lahoti Joint Status Decl. and Lahoti Attorneys' Fee Objection Decl. Exhibit N should be stricken. Fed. R. Evid. 401, 403, 602, 701.

Sustain _____ Overrule _____

10. Page 3, Lines 24-26, Exhibit O: "Attached hereto as Exhibit O is a true and correct copy of a print out of DMV.ORG's Facebook 'Wall' as it appeared

1 on or about August 31, 2011 which shows the various user comments to
2 DMV.ORG.”

3 Objection: Exhibit O, which allegedly consists of a print out of
4 DMV.ORG’s Facebook Wall on or about August 31, 2011, lacks foundation,
5 constitutes inadmissible hearsay, is irrelevant and imprecise as to time, expresses
6 improper opinion, and is not the best evidence. Defendants invite the Court to visit
7 the website. *See* Lahoti Joint Status Decl. and Lahoti Attorneys’ Fee Objection
8 Decl. Exhibit O should be stricken. Fed. R. Evid. 401, 403, 602, 701, 801, 802.

9 Sustain _____ Overrule _____

10 11. Page 3, Lines 27-28 and Page 4, Lines 1-4, Exhibit P: “Attached
11 hereto as Exhibit P is a true and correct copy of a print out of DMV.ORG’s
12 Facebook ‘Wall’ on or about September 1, 2011 which shows that some of the user
13 comments appearing on the August 31 print out have been deleted. For example,
14 on page 2, comments from users ‘Aisa Choi’ and ‘Clinton Kirk’ have been deleted;
15 on page 3, comments from users ‘Cris Melo,’ ‘Willie Murphy,’ ‘Michelle Cosmi
16 Fern,’ ‘Hope Norwood’ and ‘Mr. Impatient’ have been deleted.”

17 Objection: Exhibit P, which allegedly consists of a print out of
18 DMV.ORG’s Facebook Wall on or about September 1, 2011, and testimony
19 concerning what allegedly happened to certain comments lack foundation,
20 constitute inadmissible hearsay, are irrelevant and imprecise as to time, and
21 express improper opinion. *See* Lahoti Joint Status Decl. and Lahoti Attorneys’ Fee
22 Objection Decl. Exhibit P should be stricken. Fed. R. Evid. 401, 403, 602, 701,
23 801, 802.

24 Sustain _____ Overrule _____

25 12. Page 4, Lines 5-8, Exhibit P-1: “Attached hereto as Exhibit P-1 is a
26 true and correct copy of a print out of another one of DMV.ORG’s Facebook pages
27 called ‘DMV.ORG Practice Tests’ which was printed on or about September 2,
28

2011. As can be seen from this print out, there appears to be no disclaimer text anywhere on this page.”

Objection: Exhibit P-1, which allegedly consists of a print out of DMV.ORG’s Facebook pages on or about September 2, 2011, and testimony concerning what “appears” to be apparent from a review of the exhibit lack foundation, are irrelevant and imprecise as to time, express improper opinion, and are not the best evidence. Defendants invite the Court to visit the website. *See* Lahoti Joint Status Decl. and Lahoti Attorneys’ Fee Objection Decl. Exhibit P-1 should be stricken. Fed. R. Evid. 401, 403, 602, 701.

Sustain _____ Overrule _____

13. Page 4, Lines 21-23, Exhibit S: “Attached hereto as Exhibit S is a true and correct copy of a screen shot of DMV.ORG’s ‘Contact DMV.ORG Website Support’ page dated on or about August 4, 2011.”

Objection: Exhibit S, which allegedly consists of a screen shot of a page on DMV.ORG dated on or about August 4, 2011, lacks foundation, is irrelevant and imprecise as to time, expresses improper opinion, and is not the best evidence. Defendants invite the Court to visit the website. *See* Lahoti Joint Status Decl. and Lahoti Attorneys’ Fee Objection Decl. Exhibit S should be stricken. Fed. R. Evid. 401, 403, 602, 701.

Sustain _____ Overrule _____

14. Page 4, Lines 27-28 and Page 5, Lines 1-2, Exhibit T: “When the above link is clicked, the consumer is directed to a web page containing the text ‘DMV Office Locations’ which prompts the consumer to enter a ZIP code under ‘What’s your location?’ Attached hereto as Exhibit T is a true and correct copy of a screen shot of this web page.”

Objection: Exhibit T, which allegedly consists of a screen shot of a DMV.ORG webpage (date unknown), and testimony concerning what allegedly happens when a certain link is clicked lacks foundation, is irrelevant and imprecise

as to time, expresses improper opinion, and is not the best evidence. Defendants invite the Court to visit the website. *See* Lahoti Joint Status Decl. and Lahoti Attorneys' Fee Objection Decl. Exhibit T should be stricken. Fed. R. Evid. 401, 403, 602, 701.

Sustain _____ Overrule _____

15. Page 5, Lines 3-5, Exhibit U: "Attached hereto as Exhibit U is a true and correct copy of a screen shot of the above page, with a (sample) zip code '91105' [Pasadena zip code] entered in the 'What's your location?' tool bar."

Objection: Exhibit U, which allegedly consists of a screen shot of a page on DMV.ORG (date unknown), lacks foundation, is irrelevant and imprecise as to time, expresses improper opinion, and is not the best evidence. Defendants invite the Court to visit the website. *See* Lahoti Joint Status Decl. and Lahoti Attorneys' Fee Objection Decl. Exhibit U should be stricken. Fed. R. Evid. 401, 403, 602, 701.

Sustain _____ Overrule _____

16. Page 5, Lines 6-10, Exhibit V: "After the zip code has been entered, the consumer is then directed to a web page containing a list of various DMV offices based on the entered zip code. This list is hyperlinked, which means that when the text is clicked, it directs the consumer to another web page. Attached hereto as Exhibit V is a true and correct copy of a screen shot after the zip code '91105' has been entered, with a list of various DMV offices."

Objection: Exhibit V, which allegedly consists of a screen shot of a page on DMV.ORG (date unknown), and testimony as to what happens after a certain zip code has been entered lacks foundation, is irrelevant and imprecise as to time, expresses improper opinion, and is not the best evidence. Defendants invite the Court to visit the website. *See* Lahoti Joint Status Decl. and Lahoti Attorneys' Fee Objection Decl. Exhibit V should be stricken. Fed. R. Evid. 401, 403, 602, 701.

Sustain _____ Overrule _____

17. Page 5, Lines 11-17, Exhibit W: “After the consumer clicks on the ‘Pasadena DMV Office’ link in the list of DMV offices, the consumer is then directed to a web page....Attached hereto as Exhibit W is a true and correct copy of a screen shot showing this list of ‘Online Services.’”

Objection: Exhibit W, which allegedly consists of a screen shot of a page on DMV.ORG (date unknown), and testimony as to what happens after a “consumer” clicks on a certain link lacks foundation, is irrelevant and imprecise as to time, expresses improper opinion, and is not the best evidence. Defendants invite the Court to visit the website. *See* Lahoti Joint Status Decl. and Lahoti Attorneys’ Fee Objection Decl. Exhibit W should be stricken. Fed. R. Evid. 401, 403, 602, 701.

Sustain _____ Overrule _____

18. Page 5, Lines 18-23, Exhibit X: “Attached hereto as Exhibit X is a true and correct copy of a screen shot showing the web page that the consumer is directed to after he or she clicks on the DMV.ORG’s ‘traffic school’ link....”

Objection: Exhibit X, which allegedly consists of a screen shot of a page on DMV.ORG (date unknown), and testimony as to what happens after a certain link is clicked lacks foundation, is irrelevant and imprecise as to time, expresses improper opinion, and is not the best evidence. Defendants invite the Court to visit the website. *See* Lahoti Joint Status Decl. and Lahoti Attorneys’ Fee Objection Decl. Exhibit X should be stricken. Fed. R. Evid. 401, 403, 602, 701.

Sustain _____ Overrule _____

19. Page 5, Lines 24-28 and Page 6, Lines 1-2, Exhibit X-1: “When ‘Registration Renewal’ under ‘Online Services’ are clicked, the consumer is then directed to DMV.ORG’s web page....Attached hereto as Exhibit X-1 is a true and correct copy of a screen shot on or about September 6, 2011 showing this ‘Registration Renewal’ web page.”

1 Objection: Exhibit X-1, which allegedly consists of a screen shot of a
2 page on DMV.ORG (date unknown), and testimony as to what happens after a
3 certain link is clicked lacks foundation, are irrelevant and imprecise as to time,
4 express improper opinion, and are not the best evidence. Defendants invite the
5 Court to visit the website. *See* Lahoti Joint Status Decl. and Lahoti Attorneys' Fee
6 Objection Decl. Exhibit X-1 should be stricken. Fed. R. Evid. 401, 403, 602, 701.

7 Sustain _____ Overrule _____

8 20. Page 6, Lines 4-7, Exhibit X-2: "Attached hereto as Exhibit X-2 is a
9 true and correct copy of a screen shot taken on or about August 4, 2011 of the
10 website www.unitedstates.org showing the link to DMV.ORG on the right hand
11 side of the page under 'Top Picks' before the links to various government
12 websites."

13 Objection: Exhibit X-2, which allegedly consists of a screen shot
14 taken on or about August 4, 2011 of the website www.unitedstates.org, lacks
15 foundation, is irrelevant and imprecise as to time, expresses improper opinion, and
16 is not the best evidence. Defendants invite the Court to visit the website. *See*
17 Lahoti Joint Status Decl. and Lahoti Attorneys' Fee Objection Decl. Exhibit X-2
18 should be stricken. Fed. R. Evid. 401, 403, 602, 701.

19 Sustain _____ Overrule _____

20 21. Page 6, Lines 10-18: "I own an Apple iPad. In the last week or so, I
21 have accessed the DMV.ORG website on my iPad on multiple occasions....I also
22 checked iPhones of my colleagues...the content of the DMV.ORG website was
23 fully viewable and accessible when scrolling down from the splash page, even
24 before clicking on the 'continue' button."

25 Objection: Testimony concerning accessing the DMV.ORG website
26 on various dates using various devices lacks foundation as it fails to identify the
27 date and particular model of device (which devices have a wide range of web
28

1 functionality). Fed. R. Evid. 602. Lahoti Joint Status Decl. and Lahoti Attorneys'
2 Fee Objection Decl.

3 Sustain _____ Overrule _____

4 22. Page 6, Lines 20-22, Exhibit Y: "Attached hereto as Exhibit Y is a
5 true and correct copy of a printout of a blog entry dated August 2, 2011 from
6 'Rebecca Tushnet's 43(B)log' regarding the Ninth Circuit's July 28, 2011
7 Opinion."

8 Objection: Exhibit Y lacks foundation, constitutes inadmissible
9 hearsay, amounts to an improper opinion and legal conclusion, and is irrelevant,
10 misleading, confusing, and prejudicial. Fed. R. Evid. 401, 403, 602, 701, 801, 802.
11 Lahoti Joint Status Decl. and Lahoti Attorneys' Fee Objection Decl.

12 Sustain _____ Overrule _____

13 23. Page 6, Lines 23-25, Exhibit Z: "Attached hereto as Exhibit Z is a
14 true and correct copy of a blog entry from the blog 'California Appellate Report'
15 dated July 28, 2011 regarding the Ninth Circuit's July 28, 2011 Opinion."

16 Objection: Exhibit Z lacks foundation, constitutes inadmissible
17 hearsay, amounts to an improper opinion and legal conclusion, and is irrelevant,
18 misleading, confusing, and prejudicial. Fed. R. Evid. 401, 403, 602, 701, 801, 802.
19 Lahoti Joint Status Decl. and Lahoti Attorneys' Fee Objection Decl.

20 Sustain _____ Overrule _____

21 24. Page 6, Lines 27-28 and Page 7, Line 1, Exhibit AA: "Attached
22 hereto as Exhibit AA is a true and correct copy of the Federal Trade Commission's
23 (FTC) Guidelines for online disclosures which I printed from the FTC's website
24 www.ftc.gov."

25 Objection: Exhibit AA lacks foundation, constitutes inadmissible
26 hearsay, amounts to an improper opinion and legal conclusion, and is irrelevant,
27 misleading, confusing, and prejudicial. Fed. R. Evid. 401, 403, 602, 701, 801, 802.
28 Lahoti Joint Status Decl. and Lahoti Attorneys' Fee Objection Decl.

Sustain _____ Overrule _____

25. Page 7, Lines 14-17: “According to a 2003 DMV study, there are approximately 20,000 new provisional licenses issues [sic] monthly. This includes all drivers under the age of 18.”

Objection: Testimony concerning a DMV study concerning the number of provisional licenses issued in 2003 lacks foundation, constitutes inadmissible hearsay, and is irrelevant. Fed. R. Evid. 401, 403, 602, 801, 802. Lahoti Joint Status Decl. and Lahoti Attorneys’ Fee Objection Decl.

Sustain _____ Overrule _____

26. Page 8, Lines 1-6: “According to the US DOT, FHA (United States Department of Transportation, Federal Highway Administration) report for 2009, there were 236,358 licensed drivers aged 16 & 17 in CA. The average age according to the CA DMV study noted above for a provisional license being issued is 16 ½. The same report showed there were 3,836,929 licensed drivers aged <16, 16, 17 in the entire United States.”

Objection: Testimony concerning a 2009 report allegedly made by the US DOT and FHA lacks foundation, constitutes inadmissible hearsay, and is irrelevant. Fed. R. Evid. 401, 403, 602, 801, 802. Lahoti Joint Status Decl. and Lahoti Attorneys’ Fee Objection Decl.

Sustain _____ Overrule _____

Defendants respectfully request that the Court sustain the above objections and strike the corresponding evidence.

FOLEY & LARDNER LLP

Dated: November 14, 2011

By: /s/ Kathryn M.S. Catherwood
KATHRYN M.S. CATHERWOOD
Attorneys for Defendants
EDRIVER, INC., ONLINE GURU
INC., FIND MY SPECIALIST, INC.,
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